

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Case No. 4:11-CV-00077-RWS
)	
SIERRA CLUB)	Judge Rodney W. Sippel
)	
Plaintiff-Intervenor)	
)	
v.)	
)	
AMEREN MISSOURI,)	
)	
Defendant.)	
)	

AMEREN MISSOURI'S NOTICE OF SUPPLEMENTAL AUTHORITY

Defendant Ameren Missouri ("Ameren") respectfully submits the supplemental authority attached hereto as Exhibit A, Order Dismissing Appeals, *United States v. Luminant Generation Co., LLC*, No. 17-10235, 2019 WL 3778363 (5th Cir. Aug. 9, 2019).

As the Court may recall from Ameren's brief in support of its Motion for Summary Judgment No. 1 Regarding Plaintiffs' Requests for Injunctive Relief, ECF # 945, in the *Luminant Generation* matter (a New Source Review matter similar to this case), defendant Luminant argued that there is no continuing violation for operating a source without a PSD permit and BACT. Luminant moved to dismiss the PSD claims as time-barred under the statute of limitations and argued that any injunctive relief was unavailable, because the CAA provides for injunctive relief only to prevent construction or modification of a facility, not after construction or modification. The District Court granted Luminant's motion, holding that "Congress did not provide for injunctive relief for past violations in the Clean Air Act." No. 3:13-CV-3236-K,

2015 WL 5009378, at *7 (N.D. Tex. Aug. 21, 2015). In so doing, the District Court agreed with the holding of the United States Court of Appeals for the Third Circuit in *United States v. EME Homer City Generation*, 727 F.3d 274 (3rd Cir. 2013). The District Court accordingly entered a final judgment in Luminant's favor.

A three-judge panel of the Fifth Circuit reversed the District Court's ruling and remanded the case. The Fifth Circuit's panel decision, *United States v. Luminant Generation Co., LLC*, 905 F.3d 874 (5th Cir. 2018), was cited by this Court in *United States v. Ameren Missouri*, 372 F. Supp. 3d 868, 872 (E.D. Mo. 2019), in denying Ameren's Motion for Summary Judgment.

As we advised this Court in ECF #1118, the Fifth Circuit *en banc* granted Luminant's petition for re-hearing and scheduled oral argument for late September.

On Friday, August 9, in order to avoid appellate review on whether the CAA authorizes injunctive relief for past violations, the United States and Sierra Club voluntarily dismissed with prejudice their appeal, effectively abandoning the underlying enforcement case they had waged for six years. The decision to dismiss the appeal leaves intact the District Court's original dismissal and holding that "Congress did not provide for injunctive relief for past violations in the Clean Air Act." *Luminant Generation*, 2015 WL 5009378, at *7.

Dated: August 13, 2019

/s/ Matthew B. Mock

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CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2019, I caused the foregoing document to be electronically filed with the Clerk of Court using the CM/ECF system, which will cause an electronic copy to be served on all counsel of record.

/s/ Matthew B. Mock

Matthew B. Mock